

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ANGEL ARAGON PEREZ,

Plaintiff,

v.

No. CV 09-0164 JH/WDS

STATE OF NEW MEXICO,  
GEO MEDICAL STAFF,  
PSYCHOLOGIST, CORRECTIONAL  
OFFICERS, WARDEN, ASSOCIATE  
WARDEN, DEPUTY WARDEN,  
CASE MANAGERS,

Defendants.

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(b)(6), to review Plaintiff's civil rights complaint. Plaintiff is incarcerated, appearing pro se, and proceeding in forma pauperis. For the reasons below, Plaintiff will be required to file an amended complaint.

The Court has the discretion to dismiss an in forma pauperis complaint *sua sponte* under §1915(e)(2) "at any time if . . . the action . . . is frivolous or malicious; [or] fails to state a claim on which relief may be granted." The Court also may dismiss a complaint *sua sponte* under Fed. R. Civ. P. 12(b)(6) for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (quoting *McKinney v. Oklahoma, Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). A plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 127 S.

Ct. 1955, 1974 (2007). In reviewing Plaintiff's pro se complaint, the Court applies the same legal standards applicable to pleadings drafted by counsel but liberally construes the allegations. *See Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992).

The complaint asserts three claims, for denial of medical treatment, interference with mail, and excessive segregation. Plaintiff does not, however, identify any individual Defendants who are allegedly responsible for the violations. As a result, the complaint does not state a claim against a defendant on which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Under *Hall v. Bellmon*, 935 F.2d at 1110, the Court allow Plaintiff an opportunity to amend his complaint, identifying individual defendant(s) responsible for the alleged constitutional violations. Failure to comply with this order may result in dismissal of Plaintiff's complaint.

IT IS THEREFORE ORDERED that Plaintiff's second motion for leave to proceed in forma pauperis (Doc. 11) is DENIED as moot;

IT IS FURTHER ORDERED that, within fifteen (15) days from entry of this order, Plaintiff may file an amended complaint identifying the individual defendant(s) responsible for the alleged constitutional violations.



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UNITED STATES MAGISTRATE JUDGE